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10/726,474

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Masood Murtuza

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06/23/2008

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EXAMINER

DICKEY, THOMAS L

ART UNIT

PAPER NUMBER

2826

NOTIFICATION DATE

DELIVERY MODE

06/23/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

uspto@ti.com

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**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

10/726,474

**Applicant(s)**

MURTUZA, MASOOD

**Examiner**

Thomas L. Dickey

**Art Unit**

2826

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 09 June 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because:  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-5, 7, 8, 10, 12-14 and 24-33.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_.

/Thomas L. Dickey/  
Primary Examiner, Art Unit 2826

Continuation of 3. NOTE: Whether the plurality of inter-level dielectric (ILD) layers of claims 1, 12, and 24 are substantially non-load bearing creates a new issue not previously searched or considered. The Examiner further notes the absence of a recital of any actual loads in the claims. In the absence of actual loads, a recital of a "substantially non load bearing" limitation appears at first glance to be nothing more than a recital of intended use, or rather a recital of intended non-use (i.e. "negative" intended use recital).

Whether the at least one support structure of claims 1, 12, and 24 is/are load bearing creates a new issue not previously searched or considered. Again, the Examiner notes the absence of a recital of any actual loads in the claims. In the absence of actual loads, a recital of a "load bearing" limitation appears at first glance to be nothing more than a recital of intended use.

It is further noted that the claims already recite that "support structures [there is, apparently, more than one support structure, despite Applicants' apparent ambivalence on that topic, expressed in the form of the recital of "at least one support structure"] overly each other in the plurality of layers to mitigate structural damage of the plurality of ILD layers caused by stresses to the plurality of ILD layers." What is the difference between the proposed amendments (which appear to simply recite that the support structure(s) are intended to bear more of any loads that might someday materialize than the "substantially" non-load bearing ILD layers) and the already recited "mitigate structural damage ... caused by stresses"?

It also appears (at first glance; more consideration will produce a definitive answer) that, as to the non-load bearing properties of the ILD layers, Applicants may have simply discovered "previously unappreciated properties" of the sort discussed in *Titanium Metals Corp. v. Banner*, 778 F.2d 775, 227 USPQ 773 (Fed. Cir. 1985). See MPEP § 2112.01. Applicants' ILD layers (like those of the prior art) are made from spin-on dielectrics (SOD), hydrogen silsesquioxane (HSQ), silicon oxyfluoride, or fluorinated amorphous carbon, all of which have much higher moduli of elasticity than the moduli of elasticity of the aluminum, aluminum alloy, copper, copper alloy, tungsten, or tungsten alloys that form Applicants' (and the prior art's) support structures. It might be reasonable to assume the higher moduli of elasticity materials (one less inclined to displays of erudition than the Examiner might simply call these materials "softer" or "weaker") are capable of yielding when one attempts to place them under load, leaving the lower moduli of elasticity ("harder," "stronger") aluminum, aluminum alloy, copper, copper alloy, tungsten, or tungsten alloy support structures to bear the load. A prior art disclosure that failed to demonstrate proper appreciation for this property may have nonetheless inherently disclosed it.